

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
WINCHESTER DIVISION**

In re:)	
)	
WILLIAM R. SASHER and BONITA)	
G. SASHER)	Case No. 4:07-bk-10425
)	Chapter 7
)	
Debtors.)	

STATE OF TENNESSEE, <i>ex rel.</i>)	
ROBERT E. COOPER, JR.,)	
ATTORNEY GENERAL AND)	
REPORTER,)	
)	
Plaintiff,)	
)	Adversary Proceeding
v.)	No. _____
)	
BONITA SASHER, a.k.a. Bonnie Sasher,)	
WILLIAM SASHER, a.k.a. Bill Sasher,)	
both individually and doing business as)	
DOGWOOD ENERGY, AMERICAN)	
FREEDOM FUELS PELLET MART,)	
www.bulkpellets.com,)	
www.pelletmart.com,)	
www.dogwoodenergy.com,)	
www.woodfuelpellets.com, and)	
www.americanfreedomfuels.com,)	
)	
Defendants.)	

**ADVERSARY COMPLAINT OF THE STATE OF TENNESSEE TO DETERMINE
DISCHARGEABILITY OF DEBT UNDER 11 U.S.C. § 523(a)(2) and (4)**

Comes now the Tennessee Attorney General, on behalf of the Division of Consumer Affairs within the Department of Commerce and Insurance, (hereinafter “State of Tennessee” or “State”) by and through undersigned counsel, and petitions the Court, pursuant to 11 U.S.C. § 523(a)(2) and

(4) for the limited purpose of determining that the contingent debt owed to the State of Tennessee on behalf of consumers for consumer restitution is nondischargeable. In support thereof, the State of Tennessee submits as follows:

1. This adversary proceeding arises out of the Defendant's Chapter 7 Case No. 4:07-bk-10425.

2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 11 U.S.C. § 523. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

3. This adversary proceeding relating to consumer restitution stems from the State's civil law enforcement suit against the Sashers, individually and doing business as Dogwood Energy, LLC, Dogwood Energy, American Freedom Fuels, and Pellet Mart that it brought in state court in January 2007. Coffee County Chancery Court Case No. 07-5. The State's Complaint is attached as Exhibit A and incorporated into this Complaint.

4. Plaintiff, State of Tennessee, by and through its Attorney General and Reporter, Robert E. Cooper, Jr., is charged with enforcing the Tennessee Consumer Protection Act of 1977 ("TCPA"), Tenn. Code Ann. § 47-18-101 *et seq.*, which prohibits unfair or deceptive acts or practices affecting the conduct of any trade or commerce. Under Tenn. Code Ann. § 47-18-108(a)(1), the Attorney General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the TCPA and to secure such equitable and other relief as may be appropriate in each case. Through Tenn. Code Ann. § 47-18-108(b)(1), the State has the authority to obtain restitution for "any ascertainable loss" by reason of the unfair or deceptive trade or practice.

5. Defendant, Bonita Gail Sasher, also known as Bonnie Sasher, is an individual who

resides at 500 Hillwood Road, Tullahoma, Tennessee 37388. Prior to her chapter 7 petition, Bonita Sasher owned 51% of Dogwood Energy, LLC, doing business as, Dogwood Energy, American Freedom Fuels, Pellet Mart, www.dogwoodenergy.com, www.americanfreedomfuels.com, www.woodfuelpellets.com, www.bulkpellets.com, and www.pelletmart.com. Prior to January 20, 2006, Defendant Bonita Sasher, in conjunction with Defendant William Sasher, operated their business under various trade names as a sole proprietorship. At all times relevant to this adversary complaint, Defendant Bonita Sasher actively participated in the operation, sales, advertising and promotion of the above references businesses, including, but not limited to, representations made concerning the sale of wood pellets which are used to provide heating to consumers' and other persons' homes and businesses. Defendant Bonita Sasher, in conjunction with Defendant William Sasher, was the signatory or otherwise exercised control over all bank accounts into which consumers sent money for wood pellet orders. Defendant Bonita Sasher, acting alone or in concert with others has formulated, directed, controlled, has or has had the authority to control or has actively participated in all of the acts and practices at issue in this Adversary Complaint including the misrepresentations and fraudulent conduct alleged herein.

6. Defendant William R. Sasher, also known as Bill Sasher, is an individual who resides at 500 Hillwood Road, Tullahoma, Tennessee 37388. Prior to his chapter 7 petition, Bill Sasher owned 49% of Dogwood Energy, LLC, doing business as, Dogwood Energy, American Freedom Fuels, Pellet Mart, www.dogwoodenergy.com, www.americanfreedomfuels.com, www.woodfuelpellets.com, www.bulkpellets.com, and www.pelletmart.com. Prior to January 20, 2006, Defendant William Sasher, in conjunction with Defendant Bonita Sasher, operated their business under various trade names as a sole proprietorship. Defendant William Sasher, in

conjunction with Defendant Bonita Sasher, was the signatory or otherwise exercised control over all bank accounts into which consumers sent money for wood pellet orders. At all times relevant to this adversary complaint, Defendant William Sasher actively participated in the operation, sales, advertising and promotion of the above references businesses, including, but not limited to, representations made concerning the sale of wood pellets which are used to provide heating to consumers' and other persons' homes and businesses. Defendant William Sasher, acting alone or in concert with others has formulated, directed, controlled, has or has had the authority to control or has actively participated in all of the acts and practices at issue in this Adversary Complaint including the misrepresentations and fraudulent conduct alleged herein.

7. The Sashers previously had debts discharged under a successful chapter 7 petition in the Southern District of Indiana in 1996.

8. The State's Adversary Complaint concerns the Sashers' conduct relating to their sale of wood pellets through their incorporated and unincorporated businesses from approximately December 2005 until approximately Fall 2006.

9. The Defendants collected \$275,974 from hundreds of consumers without providing them with any wood pellets or a refund.

10. As way of background, wood pellets are used and were represented by the Sashers to be used as a fuel source to provide heating for consumers' and other persons' homes and businesses.

11. Around December 2005, the Defendants made a business decision to begin looking at wood fuel pellets as a complement to the bio-fuel product line because there was a national shortage of wood fuel pellets.

12. The Defendants promoted wood pellets for sale primarily on their websites, including www.bulkpellets.com, www.pelletmart.com, and also through www.dogwoodenergy.com, and www.americanfreedomfuels.com.

13. Consumers purchased pellets from the Defendants by mail through a check, money order or credit card, by phone with a credit card number, or directly online through the Defendants' websites.

14. Prior to the point of sale, the Defendants, directly or indirectly through individuals under the Defendants' direction and control, made oral and written representations concerning the delivery date, delivery method, status of refunds, and availability of wood pellets to consumers.

15. Prior to the point of sale, the Defendants, directly or indirectly through individuals under the Defendants' direction and control, made oral and written representations that consumers should place and pay for their orders early to have wood pellets ready before the winter months.

16. The Defendants personally signed letters and composed e-mail messages to consumers acknowledging receipt of a wood pellet order and making representations about the delivery date, delivery method, status of refunds, and availability of wood pellets to consumers..

17. Under the direction and control of the Defendants, other employees at the Defendants' unincorporated and incorporated businesses also signed letters and composed e-mail messages to consumers acknowledging receipt of a wood pellet order and making representations about the delivery date, delivery method, status of refunds, and availability of wood pellets to consumers.

18. Wood pellet consumers were given a delivery schedule with respect to wood pellets ordered directly from the Defendants or through the Defendants' incorporated or unincorporated

businesses.

19. The Defendants made explicit representations concerning delivery dates and times knowing that a standard size tractor trailer truck could only carry between eight to ten one ton pallets of wood pellets at a time.

20. The Defendants accepted wood pellet orders that they knew they could not fulfill and/or deliver.

21. The Defendants continued to have an operational PayPal account that accepted incoming wood pellets orders that they knew they could not fulfill and/or deliver.

22. The Defendants represented that funds collected for pellet orders were spent on the pellet orders and administrative and delivery costs for the pellet orders.

23. The Defendants, who exercised control over the bank account into which pellet order monies were placed, used a substantial portion of the money collected from pellet orders on personal items, such as dinners and groceries, numerous payments to “cash,” as well as to fund their other business ventures.

24. From the inception of the website, and until April 21, 2006, the Defendants stated on their website, www.bulkpellets.com, “Get off-season rates! Place order now for spring, summer or fall delivery.”

25. By at least April 21, 2006 and continuing through at least June 15, 2006, the Defendants stated on their website, www.bulkpellets.com, “Get off-season rates! Place your order now for Summer or Fall delivery.”

26. By at least June 15, 2006 and continuing through at least July 1, 2006, the Defendants stated on their website, www.bulkpellets.com, “Get off-season rates! Place your order now for Fall

or Winter delivery.”

27. By at least July 1, 2006 and continuing until October 4, 2006, the Defendants stated on their website, www.bulkpellets.com, “Place your order now for Fall or Winter delivery.”

28. From the website’s inception and continuing until June 15, 2006, the Defendants’ stated on their website, www.bulkpellets.com, the following:

Due to overwhelming demand ALL wood pellet surplus is gone. However, You [sic] can pre-order below for next heating season. . . Pellet Shortage? Reports suggest wood pellets will be in short supply next winter. It would be wise to purchase early for next year, while stock is still available.

29. From at least June 15, 2006 until July 1, 2006, the Defendants stated on their website, www.bulkpellets.com, the following:

Availability Notice: We currently have a surplus of pellets and they can be picked up at our warehouse in Tennessee for \$229 per ton. . . . Above is a picture of one of our delivery trucks. We get as close as possible to your house then our “all terrain forklift” pictured below, puts your one ton pallets of pellets where you want them.

30. From at least July 1, 2006 until August 19, 2006, the Defendants stated on their website, www.bulkpellets.com, the following:

Availability Notice: We currently have a surplus of pellets and they can be picked up at our warehouse in Tennessee. . . . Above is a picture of one of our delivery trucks. We get close as possible to your house then our “all terrain forklift” pictured below, puts your one ton pallets of pellets in your driveway or yard.

31. From August 19, 2006 until date uncertain but after October 4, 2006, the Defendants stated on their website, www.bulkpellets.com, the following:

For home delivery please go to the bottom page. If you want to pick up at our location in Tennessee the current price is \$239 per ton in any quantity. Availability Notice: We currently have a surplus of wood pellets [sic] We will have available to ship 4-20 ton truckloads

the week of 9/25/06 [sic] We will have available to ship 7-20 ton truckloads the week of 10/02/06 [sic] We will have available to ship 10-20 ton truckloads the week of 10/09/06 and 10 each week thereafter. These are available by complete truckload at the current price of \$239.00 per ton pre-paid. You pick up at our location in Tennessee or Kentucky. We will specify which location. Above is a picture of one of our wood pellet fuel delivery trucks. We get as close as possible to your house then our "all terrain forklift" pictured below, puts your one ton pallets of wood pellets in your driveway or yard.

32. From June 15, 2006 until October 4, 2006, the Defendants placed a picture of three rows of approximately 12 one ton wood pellet pallets on their website, www.bulkpellets.com.

33. From October 4, 2006 and until date uncertain, the Defendants placed a picture of six rows of 1 ton wood pellet pallets of an unknown depth, stacked 2 high.

34. Since the inception of the website until April 6, 2006, the Defendants stated on their website, www.bulkpellets.com, the following:

1 ton minimum order. \$198.00 per ton. Free Delivery To [sic] these states. [sic] Arkansas[,] Georgia[,] Illinois[,] Indiana[,] Kentucky[,] Missouri[,] New Jersey[,] New York[,] North Carolina[,] Ohio[,] Pennsylvania[,] South Carolina[,] Tennessee[,] Virginia[,] [and] West Virginia \$198.00 per ton free delivery . . . \$65 Per Ton Delivery Charge To [sic] these states.[sic] Connecticut[,] Delaware[,] Maryland[,] Massachusetts[,] Michigan[,] New Hampshire[,] Rhode Island[,] Vermont[,] [and] Wisconsin \$198 per ton plus \$65.00 shipping per ton . . . If your state is not listed above pellets are \$198.00 per ton plus \$90.00 shipping per ton.

35. From April 6, 2006, until April 21, 2006, the Defendants stated on their website, www.bulkpellets.com, the following:

1 ton minimum order. \$198.00 per ton. Free Delivery To [sic] these states. [sic] Alabama[,] Arkansas[,] Georgia[,] Illinois[,] Indiana[,] Kentucky[,] Mississippi[,] Missouri[,] New Jersey[,] New York[,] North Carolina[,] Ohio[,] Pennsylvania[,] South Carolina[,] Tennessee[,] Virginia[,] [and] West Virginia \$198.00 per ton free delivery . . . \$65 Per Ton Delivery Charge To [sic] these states.[sic]

Connecticut[,] Delaware[,] Maryland[,] Massachusetts[,] Michigan[,] New Hampshire[,] Rhode Island[,] Vermont[,] [and] Wisconsin \$198 per ton plus \$65.00 shipping per ton . . . If your state is not listed above pellets are \$198.00 per ton plus \$90.00 shipping per ton.

36. From April 21, 2006 until June 15, 2006, the Defendants stated on their website, www.bulkpellets.com, the following:

1 ton minimum order. \$229.00 per ton [sic] Free Delivery To [sic] these states. [sic] Alabama[,] Arkansas[,] Georgia[,] Illinois[,] Indiana[,] Kentucky[,] Mississippi[,] Missouri[,] New Jersey[,] New York[,] North Carolina[,] Ohio[,] Pennsylvania[,] South Carolina[,] Tennessee[,] Virginia[,] [and] West Virginia \$229.00 per ton free delivery . . . \$65 Per Ton Delivery Charge To [sic] these states.[sic] Connecticut[,] Delaware[,] Maryland[,] Massachusetts[,] Michigan[,] New Hampshire[,] Rhode Island[,] Vermont[,] [and] Wisconsin \$229 per ton plus \$65.00 shipping per ton . . . If your state is not listed above pellets are \$229.00 per ton plus \$90.00 shipping per ton.

37. From June 15, 2006, until July 1, 2006, the Defendants stated on their website, www.bulkpellets.com, the following:

Availability Notice: We currently have a surplus of pellets and they can be picked up at our warehouse in Tennessee for \$229 per ton. . . 1 ton minimum order. \$279.00 per ton delivered To [sic] these states. [sic] Alabama[,] Arkansas[,] Georgia[,] Illinois[,] Indiana[,] Kentucky[,] Mississippi[,] Missouri[,] New Jersey[,] New York[,] North Carolina[,] Ohio[,] Pennsylvania[,] South Carolina[,] Tennessee[,] Virginia[,] [and] West Virginia \$279.00 per ton delivered to your home or business. . . \$65 Additional Per Ton Delivery Charge To [sic] these states. [sic] Connecticut[,] Delaware[,] Maryland[,] Massachusetts[,] Michigan[,] New Hampshire[,] Rhode Island[,] Vermont[,] [and] Wisconsin \$279 per ton plus \$65.00 shipping per ton . . . If your state is not listed above pellets are \$279.00 per ton plus \$90.00 shipping per ton.

38. From July 1, 2006, until August 13, 2006, the Defendants stated on their website, www.bulkpellets.com, the following:

2 ton minimum order. \$289.00 per ton delivered To [sic] these

states.[sic] Alabama[,] Arkansas[,] Georgia[,] Illinois[,] Indiana[,] Kentucky[,] Mississippi[,] Missouri[,] North Carolina[,] Ohio[,] South Carolina[,] Tennessee[,] Virginia[,] [and] West Virginia \$289.00 per ton delivered to your home or business. . . \$65 Additional Per Ton Delivery Charge To [sic] these states. [sic] Connecticut[,] Delaware[,] Maryland[,] Massachusetts[,] Michigan[,] New Hampshire[,] New Jersey[,] New York[,] Pennsylvania[,] Rhode Island[,] Vermont[,] [and] Wisconsin \$279 per ton plus \$65.00 shipping per ton . . . If your state is not listed above pellets are \$289.00 per ton plus \$90.00 shipping per ton.

39. From August 13, 2006 until October 4, 2006, the Defendants stated on their website, www.bulkpellets.com, the following:

2 ton minimum order. \$299.00 per ton delivered To [sic] these states.[sic] Alabama[,] Georgia[,] Illinois (South of I-70)[,] Indiana (South of I-70)[,] Kentucky[,] Mississippi[,] North Carolina (West of I-85) [,] Ohio (South of I-70)[,] South Carolina (West of I-95)[,] Tennessee[,] Virginia (West of I-95)[,] [and] West Virginia \$299.00 per ton delivered to your home or business. . . If your state is not listed above or you are west of the Mississippi river we do not deliver to your area.

40. From August 19, 2006 until October 4, 2006, the Defendants stated on their website, www.bulkpellets.com, the following:

For home delivery please go to the bottom of the page. If you want to pick up at our location in Tennessee the current price is \$239 per ton in any quantity.

41. From October 4, 2006 until date uncertain, the Defendants stated on their website, www.bulkpellets.com, the following:

For pick up at our location in Tennessee or Kentucky the current price is \$179 per ton in any quantity in Tennessee. Minimum 20 ton truckload in Kentucky.

42. From the inception of the website until April 6, 2006, the Defendants placed a “drop

down” box on their website, www.bulkpellets.com, for online purchases that stated “Delivery Month” and contained the following selections: May, June, July, August, and September.

43. From April 6, 2006 until June 15, 2006, the Defendants placed a “drop down” box on their website, www.bulkpellets.com, for online purchases that stated “Delivery Month” and contained the following selections: July, August, September, October, November, and December.

44. From June 15, 2006, until August 13, 2006, the Defendants placed a “drop down” box on their website, www.bulkpellets.com, for online purchases that stated “Delivery Month” and contained the following selections: September, October, November, December, January, February, and March.

45. From August 13, 2006 until October 4, 2006, the Defendants placed a “drop down” box on their website, www.bulkpellets.com, for online purchasers that stated “Delivery Month” and contained the following selections: October, November, December, January, February, and March.

46. From April 6, 2006 until October 4, 2006, the Defendants, stated on their website, www.bulkpellets.com, the following:

If we are unable to deliver for any reason we reserve the right to issue a complete refund in lieu of product delivery.

47. The Defendants knowingly or with gross recklessness made false material misrepresentations, directly or through other individuals under the Defendants’ control and direction, concerning the delivery date, delivery method, status of refunds, and availability of wood pellets that they knew or should have known would convince consumers to send the Defendants money.

48. Consumers had no way of ascertaining the falsity of these representations concerning the delivery date, delivery method, availability, and status of refunds of wood pellets.

49. The consumers' reliance on the above misrepresentations was the cause of the consumers' loss.

50. The Defendants knowingly or with gross recklessness promised to supply consumers with wood pellets and did not intend, at the time, to provide consumers with wood pellets.

52. The Defendants knowingly continued to accept incoming orders from geographical locations which they knew they could not deliver.

53. The Defendants did not deliver wood pellets or provide refunds to approximately 914 consumers who purchased wood pellets.

54. The Defendants knowingly or with gross recklessness promised to refund consumers for the wood pellets never delivered and did not intend at the time the statements were made to refund money, despite having the opportunity and available funds.

55. Consumers entrusted their payment for wood pellets to the Defendants, the Defendants appropriated the property for a use other than to provide wood pellets, such as personal use or for other business ventures.

56. The Defendants had the intent to deprive consumers of their money permanently.

COUNT ONE

57. The State re-alleges each allegation in paragraphs 1 through 56.

58. Through the above, the Defendants have engaged in acts amounting to those recognized as nondischargeable in 11 U.S.C. § 523(a)(2)(A).

COUNT TWO

59. The State re-alleges each allegation in paragraph 1 through 56.

60. Through the above, the Defendants have engaged in acts amounting to those

recognized as nondischargeable in 11 U.S.C. § 523(a)(4).

WHEREFORE, the State respectfully request that this Court:

1. Grant judgment in favor of the State and against the Defendant for consumer restitution (i.e. ascertainable losses) in the amount of \$275,974 plus statutory interest and reasonable costs of administering restitution.
2. Hold the debt nondischargeable pursuant to 11 U.S.C. § 523(a)(2) and/or (4).
3. Grant any other relief necessary to protect the interests of the State.

Respectfully submitted,

ROBERT E. COOPER, JR.
Attorney General and Reporter

/s/ Marvin E. Clements, Jr.
MARVIN E. CLEMENTS, JR.
(TN BPR# 016031)
Senior Counsel
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(615)741-1935

Attorney for Plaintiff, State of Tennessee

CERTIFICATE OF SERVICE

I, Marvin E. Clements, Jr., certify that on July 22, 2008, a copy of the *Complaint of the State of Tennessee's Adversary Complaint to Determine Dischargeability of Debt* was sent via first class mail, postage prepaid, to the following parties:

Paul Jennings
3 Jefferson Square
805 South Church Street, Suite 3
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/s/ Marvin E. Clements, Jr.
MARVIN E. CLEMENTS, JR.
Senior Counsel